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The Iranian Constitution

A Reference Aid

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The Iranian Constitution

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The author of this paper is [redacted] Iran
Analytic Center, Office of Regional and Political
Analysis. A copy of the Iranian Constitution may
be obtained from the Iran Analytic Center, telephone
[redacted]

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The Iranian Constitution

The demands of Iranian political and religious opposition leaders that the Shah "return to the Constitution" has prompted this brief examination of some key provisions of the 1906 document.

The Background

Iran has the oldest constitution in Asia. The struggle for the constitution against royal despotism is a chapter in Iranian history that is now seen in almost mythic terms. Although the provisions of the constitution have often been ignored, every politician invokes it and no one, until Ayatollah Khomeini, has sought to abolish it. [REDACTED]

Three groups of persons participated in the movement that culminated in 1906 in the granting of the constitution by a reluctant Shah. The first group was the small, educated class that for at least 75 years had been exposed to and influenced by European political and social thought. For them, the despotism of the Shah was the main impediment to the advancement of Iran, and European methods were seen as the key to this progress. The second group consisted of some of the clergy for whom opposition to an oppressive and illegitimate ruler was a religious duty. (Other clergymen opposed the constitution for the same reason.) A third group was the merchant class, in most cases closely allied with the clergy, for whom the Shah's extravagances were an economic disaster. [REDACTED]

The Constitution

The Iranian constitution—51 articles in the Fundamental Law of 1906 and 107 articles in the Supplementary Law of 1907—was from the beginning an uneasy compromise between secular and religious interests. The European-influenced secularists frequently gave a religious shading to their arguments in order to attract the support of the clergy, who had a large following. The clergy, on the other hand, was generally ignorant of the European idea of constitutionalism and tried to define the concept in traditional Islamic terms. [REDACTED]

The Rights of the Throne

In calling for "a return to the constitution" or "a return to the 1906 constitution," opposition spokesmen are being careless or ingenuous. Leaving aside Khomeini, who appears to reject both the monarchy and the constitution, those who want a "return to the constitution" probably would accept not only a monarchy but also the Pahlavi dynasty, as well as the arrangements for a regency. In this connection, the off-and-on negotiations for an ad hoc Regency Council appear to be, if not unconstitutional, extra-constitutional. [REDACTED]

Those who see the 1906 constitution as a panacea would also, logically, accept a monarchy. That constitution, however, also vests the throne in the Qajar royal house that Reza Shah ousted in 1925. [REDACTED]

The common theme seems to be that the constitution was intended to reduce royal power, but because it has not done so the Shah must have violated the constitution in order to accumulate power. According to this reasoning, observance of the constitution would automatically return the Shah to a lesser role. In part, this is true. But the real issue is the power relationships among the contending parties. Articles 27 and 28 of the supplementary law provide for a separation of powers among the legislative, judicial, and executive branches. The legislative power is derived from the Shah, the Majlis, and the senate, each of which has the right to propose laws. Any law must be approved by both houses and signed by the Shah to be legal. The exceptions are *laws concerning revenues and expenditures*, which are the prerogative of the Majlis. In recent years, the Shah has not only proposed legisla-

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X1 tion, but has had the political clout to see that the Majlis passed it. At other times, for example, under Mossadeq, it was the prime minister who had the political power and on other occasions such as the 1960 land reform bill, the Shah's proposal was rendered useless by parliamentary amendments. [REDACTED]

X1 The same article also stipulates that *the executive power is reserved for the King . . . laws and decrees shall be carried out by the minister and state officials in . . . the Name of His Imperial Majesty in such a matter as the Law defines.* [REDACTED]

X1 The Shah, like his father before him, has been careful to present his proposals to parliament and have them approved. The issue here is not the unconstitutionality of the Shah's action, but the weakness of the Majlis in relation to the Shah, a political rather than a constitutional problem. [REDACTED]

X1 Articles 35-57 specifically treat the rights of the throne. Sovereignty is described as *a trust confided . . . to the person of the King by the nation.* The King is also described as *free of responsibility.* The *ministers of state are responsible for all matters to both chambers.* Oppositionists interpret this to mean that the Shah's position at best is only titular. Article 46 stipulates that *ministers are appointed and dismissed by decree of the King.* This is modified by article 67, which gives the Majlis or the senate the power to dismiss a minister with whom either body is dissatisfied. There is no clause that gives parliament the power to appoint ministers. So, while the Shah has the power to appoint his ministers, both the Shah and parliament have the power to dismiss them. Here also the functioning of this article is governed by political rather than legal considerations. During the Mossadeq years, parliament would sometimes "vote its inclination" for a certain minister or cabinet, a vote that the Shah almost invariably accepted. It has probably been rare that the Shah has chosen his ministers entirely on his own. It has always been necessary to consider the wishes of the prime minister, other cabinet members, the military, and, at least on some occasions, the Queen. The King also has the right to nominate the heads of government departments, with the approval of the appropriate minister, but *the nomination of other officials is not a concern of the King, except as expressly provided by law.* [REDACTED]

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Article 50 is a key article. It reads, *The commander in chief of all land and sea forces is the King in person.* The present Shah, like his father before him, has interpreted this literally. The intention of the original drafters of this article is not known. In 1906, the issue was probably not seen as a problem. The article recognized the reality; the King had always had the main voice in the military because it was he who was expected to lead them in battle. Mossadeq challenged the Shah's control of the military, but on the basis of article 44 that *the King is free of responsibility.* Even he did not make an issue of it but rather, taking advantage of the Shah's political weakness, put his own men in key spots in the military structure. This proved insufficient to ensure the support of the armed forces as a whole, most of which turned against him in the showdown with the Shah in 1953. [REDACTED]

Legally the Shah's role seems to be more than that of a figurehead. Whether it is or not depends on the influence he can muster. How he accumulates this influence is not a constitutional matter, although it may be a legal one. [REDACTED]

The Religious Element

The impact of the Shia clergy is seen throughout the constitution, although in actual fact they got less from the constitution than they had expected while the constitutional debate was going on. A strong religious faction opposed the constitution. Khomeini seems to be a modern day representative of that faction. The religious faction argued that the idea of a constitution was an innovation not acceptable to Islam because Islamic law itself was wholly sufficient and constitutional provisions clashed with Islamic law. [REDACTED]

A leading opponent of the constitution, Ayatollah Nuri, put it in these terms:

Dealing with the affairs of the people is a responsibility of qualified *mujtaheds* (specialists in Islamic law), not of any secular representative.

The idea of a majority, whose agreement makes the law, is an innovation that is against Islam.

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Representation is a private matter among individuals. When a problem is a public matter no representative other than a *mujtahed* is capable of handling it. [REDACTED]

This same Ayatollah was responsible, before he turned against the constitution, for article 2 of the supplementary law, which provides for a panel of five leading religious scholars to exercise the right of absolute veto over all parliamentary legislation. This article has never been implemented but it is the article that is foremost in the clergy's mind in calling for a return to the constitution. [REDACTED]

The clergymen who supported the constitution did so on the ground that limiting the Shah's powers—as the constitution did—was a religious duty [REDACTED]

Specific examples of religious consideration are found not only in article 2 of the supplementary law but also article 1, which established Shia Islam as the official religion. Article 15, which stipulates that *no one may be dispossessed of his property except in cases authorized by religious law*, could be used against the Shah's land reform program, although it appears to conflict with other articles. [REDACTED]

Article 18, *the study and teaching of science, education, and art are free, except as prohibited by religious law*, is just as broad or just as restrictive as the governing authorities want it to be. Strictly applied, it could lead to a significant diminution in the scope of modern learning in Iran. In article 20 censorship of publications is forbidden but *heretical books and materials hurtful to the perspicuous religion (of Islam)* are banned, again an article subject to wide interpretation. [REDACTED]

Other articles provide that only Iranian Moslems may become ministers, adjudication of religious matters is left to the *mujtaheds*, and the public prosecutor is appointed by the Shah *with the approval of the religious judge* (not further defined). [REDACTED]

In summary, the Iranian constitution is in several respects ambiguous, reflecting the conflict between the secularists and religious authorities. The Shah is given a role but not a dominant one. Whether or not he does become a significant factor depends on the amount of personal power and prestige he can accumulate vis-a-vis the prime minister, parliament, and the cabinet. These institutions face the same problem and the constitution is observed, or ignored, to the extent that the major power center chooses. [REDACTED]

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